

The Honorable Robert Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOHAMED A. HUSSEIN, an individual, and  
HASSAN HIRSI, an individual,

Plaintiffs,

v.

AIR SERV CORPORATION, a foreign  
corporation,

Defendant.

Case No. 2:16-cv-00278 RSL

**PLAINTIFFS' MOTION FOR  
ATTORNEY'S FEES, COSTS AND  
CLASS REPRESENTATIVES'  
INCENTIVE AWARDS**

**NOTE ON MOTION CALENDAR:  
December 5, 2018 at 10:30a.m.**

Counsel for the Plaintiffs and Class, Badgley Mullins Turner, PLLC and the Law Office of Daniel Whitmore ("Class Counsel"), respectfully submit this Motion for Attorney's Fees, Costs, and Class Representatives' Incentive Awards on behalf of Plaintiffs Mohamed A. Hussein, Hodan A. Dahir, and Mohamed Yusuf.

**I. FACTUAL HISTORY.**

In November 2013, voters in SeaTac, Washington approved Proposition 1 and set a \$15.00 hourly minimum wage for hospitality and transportation workers within the city. Proposition 1 was codified as SeaTac Municipal Code 7.45 (the "Ordinance") and went into effect January 1, 2014. After the Ordinance went into effect, the Defendant ABM Industries, Inc. (formerly operating as Air Serv Corporation) ("Air Serv") failed to pay its workers the

1 prescribed minimum wage.

2 Class Counsel has frequently represented workers in and around Seattle-Tacoma  
3 International Airport. Through these relationships, Class Counsel learned that many employers  
4 were ignoring the Ordinance and the failing to pay the prescribed minimum hourly wage. When  
5 these workers expressed an interest in seeking payment of the mandated wage, Class Counsel  
6 began meeting with workers and researching a potential class action against Air Serv.

7 This class action and others like it send an important message to employers and deter  
8 exploitation of low-income hourly worker. Despite their concerns about potential retaliation,  
9 Plaintiffs persevered and have bettered the lives of their co-workers and others working in  
10 SeaTac, WA.  
11

12 This action was originally filed in King County Superior Court on January 20, 2016.  
13 Defendant removed the case to federal court on February 25, 2016. The Complaint was  
14 amended while the matter was still in King County Superior Court, then on March 16, 2016 the  
15 second Amended Complaint was filed in federal court. Between May 2017 and November  
16 2017, the Parties participated in active settlement discussions and on November 2, 2017, the  
17 Parties participated in mediation with well-respected mediator, Teresa Wakeen of Wakeen &  
18 Associates. With the assistance of Ms. Wakeen, the Parties reached an initial resolution of this  
19 case after a lengthy mediation session. Thereafter, the parties negotiated the final terms of the  
20 settlement agreement. At all times the negotiations were adversarial, non-collusive, and at  
21 arm's length. The mediation and subsequent negotiations culminated into a Settlement  
22 Agreement and Release of Claims (the "Agreement"), which was signed by the parties on or  
23 about March 22, 2018. Under the Settlement Agreement, Defendant Air Serv will pay  
24 Maximum Settlement Amount of Three Million, Seventy Thousand, Three Hundred Dollars,  
25  
26

1 and Thirty-Three Cents (\$3,070,300.33). In considering settlement, Class Counsel weighed and  
 2 researched the arguments raised by Air Serv in negotiations. After considering these arguments  
 3 and weighing the risk of an unfavorable outcome posed by continued litigation, the Plaintiffs  
 4 accepted Air Serv's settlement offer as embodied in the Settlement Agreement. The Settlement  
 5 Agreement represents all unpaid wages, sick pay, attorney's fees, administrative fees, and  
 6 incentive awards for class representatives.<sup>1</sup>

7 As with other class actions arising under the Ordinance, there were relatively limited  
 8 facts in dispute. During negotiations, Air Serv raised legal arguments that required legal research  
 9 and discussions with co-counsel; this is reflected in Class Counsel's proposed lodestar cross-  
 10 check.  
 11

12 Further, Class Counsel requests the Court award Plaintiffs Mohamed A. Hussein, Hodan  
 13 A. Dahir, and Mohamed Yusuf for their roles as Class Representatives the amount of \$3,000.00  
 14 (\$1,000.00 each) for their time incurred and risk of pursuing this litigation.

## 15 II. DISCUSSION.

16 The common fund doctrine dictates that lawyers who recover "common funds" are  
 17 entitled to award of attorney's fees from the common fund. *Boeing Co. v. Van Gemert*, 444 U.S.  
 18 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). The doctrine's central  
 19 purpose is to spread litigation expenses among those who benefit. *Paul, Johnson, Alston & Hunt*  
 20 *v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). Courts applying the common fund doctrine must  
 21 ensure the fees awarded are "fair, reasonable, and adequate." See *Staton*, 327 F.3d at 963-64  
 22 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).  
 23

24 The Court should consider Class Counsel's request in light of the of Three Million,  
 25

26 <sup>1</sup> Because the settlement provides for employer-contribution payroll taxes to be paid from the gross settlement value, Class Members' estimated net recovery is estimated to be 97.8% of earned back wages and sick pay.

Seventy Thousand, Three Hundred Dollars, and Thirty-Three Cents (\$3,070,300.33) provided in the Settlement Agreement, including the negotiated attorney fee contribution of \$175,000.00.

**A. Class Counsel's Fee Request Is Fair and Reasonable.**

To resolve this case, Air Serv agreed to contribute \$175,000.00 towards Class Counsel's attorney's fees and costs. This contribution is in addition to amounts set aside for unpaid back wages and interest to Class Members, and an incentive awards for the Class Representatives. Because Class Counsel's fee request directly reflects Air Serv's contribution towards attorney's fees and costs, the request is fair and reasonable.

**1. Class Counsel achieved excellent results for the Plaintiffs and Class Members.**

When calculating a fair and reasonable award, the results achieved by counsel are the most critical factor to consider. See *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Vizcaino*, 290 F.3d at 1048 ("exceptional results are a relevant circumstance" in awarding attorneys' fees). In this case, Class Counsel obtained a favorable settlement for the Plaintiffs and the Class.

Prior to settlement, Air Serv provided Plaintiffs' counsel with payroll information, from which it calculated the aggregate damages. This process included identifying potential class members, the number of hours they worked and the various rates (straight time, overtime, holiday, etc.) at which they were actually paid. After performing this analysis, Class Counsel negotiated with Air Serv to obtain a settlement value representing owed back wages and interest owed to Class Members. In doing so, Class Counsel effectively persuaded Air Serv not to pursue the defenses and arguments presented in negotiations. After deducting the \$175,000.00 in requested attorney's fees and costs, \$20,000 in estimated administrative fees, and \$3,000.00 (\$1,000.00 each) for service awards for the Class Representatives, the remaining \$2,872,300.33 will be paid to Settlement Class Members, representing both back wages and sick pay. From this

1 amount employer-contribution payroll taxes will be deducted. This is a favorable outcome and  
 2 saves Class Members from the burden of individually litigating their claims.

3 **2. Because of the complex issues in this case, the risk of loss for Plaintiffs and Class**  
 4 **Members was high.**

5 The Ninth Circuit recognizes that the public interest is served by rewarding attorneys  
 6 who assume representation on a contingent basis to compensate them for the risk that they might  
 7 be paid nothing at all for their work. *In re Wash. Pub. Power*, 19 F.3d at 1299 (“Contingent fees  
 8 that may far exceed the market value of the services if rendered on a non-contingent basis are  
 9 accepted in the legal profession as a legitimate way of assuring competent representation for  
 10 plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.”);  
 11 *Vizcaino*, 290 F.3d at 1051 (courts reward successful class counsel in contingency cases “for  
 12 taking the risk of nonpayment by paying them a premium over their normal hourly rates”).  
 13 *Omnivision*, 559 F. Supp. 2d at 1046-47 (“The risk that further litigation might result in Plaintiff  
 14 not recovering at all, particularly a case involving complicated legal issues, is a significant factor  
 15 in the award of fees.”).

16  
 17 Class Counsel prosecuted this matter on a purely contingent basis, agreeing to advance all  
 18 necessary expenses, and to only recover fees if there was recovery. Class Counsel have invested  
 19 considerable time and money in prosecuting this action. Further, Class Counsel has incurred  
 20 additional fees by communicating with class members through the media, an informational  
 21 website, and by telephone. Turner Dec., ¶5. Class Counsel’s “substantial outlay, when there is a  
 22 risk that that none of it will be recovered, supports the award of the requested fees” here.  
 23 *Omnivision*, 559 F. Supp. 2d at 1047.

24  
 25 The Ordinance’s hourly minimum wage was unprecedented in the United States, and  
 26 thus, the legal issues surrounding its enforceability are novel and complex. Because of Class

Counsel's diligent and pragmatic advocacy, the Plaintiffs and the class members were able to overcome the risk of loss and obtain a favorable outcome. As such, Class Counsel's request for a \$175,000.00 fee-award is fair and reasonable.

**B. Class Counsel's Quality of Work, Hourly Rate, and the Hours Worked Support the Requested Fee.**

The "prosecution and management of a complex national class action requires unique legal skills and abilities" that are to be considered when evaluating fees. *Omnivision*, 559 F. Supp. 2d at 1047. Class Counsel are experienced class action litigators who have become particularly skilled and experienced in litigating wage and hour class actions. In this action, their firms have spent 291.2 hours efficiently applying their skill, education, and experience. Turner Dec., ¶6, Whitmore Dec., ¶5. Among the various performed, Class Counsel researched, and briefed multiple legal issues, reviewed evidence and payroll information provided by Air Serv, and communicated with putative class members. *Id.* In negotiations, Class Counsel skillfully advocated for their clients and Class Members but were realistic and pragmatic in their settlement approach and financial benchmarks. Class Counsel's fee request reflects the numbers of hours worked and the benefits of their labor.

**C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.**

The Ninth Circuit has encouraged, but not required, courts to conduct a lodestar crosscheck when assessing the reasonableness of a percentage fee award. *See In re Bluetooth*, 654 F.3d at 944 (stating "we have also encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method" of determining fees). The first step in the lodestar method is to multiply the number of hours counsel and non-attorney staff reasonably expended on the litigation by a reasonable hourly rate. *Hanlon v. Chrysler Corp*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also Earthquake Sound Corp. v. Bumper Indus.*, 352 F.3d

1210 (9th Cir. 2003) (upholding lodestar-based fee award that included substantive case related work performed by attorneys, paralegals, and clerks).

**D. Class Counsel's Lodestar is Reasonable.**

Class Counsel have devoted approximately 291.2 hours to the investigation, litigation, and resolution of this complex case and have additional time requirements, thereby incurring more than \$121,638.54 in lodestar. Turner Dec., ¶11, Whitmore Dec., ¶5. Class Counsel spent time analyzing factual and legal issues, communicating with Plaintiffs and class members, and analyzing payroll data for the 464 class members. Turner Dec., ¶2 and 3. In addition, Class Counsel expects to incur additional hours shepherding this case through to final resolution. *Id.*, ¶7 and 11. This work will include overseeing the claims process, responding to objections, drafting and filing a motion for final approval, and attending the final approval hearing. *Id.*

The time Class Counsel devoted to this case is reasonable. Plaintiffs faced an uphill battle and a defendant with the legal and financial resources for protracted litigation. As discussed above, Class Counsel made every effort to prosecute the claims efficiently and quickly to an excellent resolution for the Plaintiffs and class members. Class Counsel had no incentive to act in a manner that was anything but economical. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (“[L]awyers are not likely to spend unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”) Throughout this case, Class Counsel endeavored to provide diligent, pragmatic and effective representation. In negotiating this settlement, Class Counsel accomplished this.

**1. Class Counsel's hourly rates are reasonable.**

Class Counsel's hourly rates are also reasonable. In determining a reasonable rate, the

1 court considers the “experience, skill and reputation of the attorney requesting fees.” *Trevino*  
 2 *v. Gates* 99 F.3d 911, 924 (9th Cir. 1996). The court also considers “the prevailing market rates  
 3 in the relevant community.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Class Counsel are  
 4 experienced, highly regarded members of the bar with extensive expertise in the area of  
 5 class actions and complex litigation involving consumer claims like those at issue here. *See*  
 6 Declarations of Duncan C. Turner and Daniel Whitmore filed with Motion for Preliminary  
 7 Approval.

8       The rates charged for attorneys and staff members working on this matter range from  
 9 \$110.00 to \$565.00, with the majority of the work performed by Mr. Turner at an hourly rate of  
 10 \$565.00 and Mr. Whitmore at an hourly rate of \$495.00. These are the rates of Class Counsel in  
 11 similar matters. These rates are also consistent with “reasonable rates” in other class actions. *See*  
 12 *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (approving  
 13 hourly rates for work performed that ranged from \$415 to \$760); *Zwicker v. Gen. Motors Corp.*,  
 14 No. C07-0291 JCC (W.D. Wash. 2008) (approving partners’ hourly rates up to \$650); *Dell v.*  
 15 *Carideo*, No. C06-1772 JLR (W.D. Wash. 2010) (approving plaintiffs’ fee request at comparable  
 16 rates to those sought here); *Khadera v. ABM Indus., Inc.* C08-0417 RSM (W.D. Wash. Oct.  
 17 2012) (same); *Arthur v. Sallie Mae, Inc.* C10- 00198 JLR (Sept. 2012 W.D. Wash.) (same);  
 18 *Meilleur v. AT&T Corp.* C11-01025 MJP (W.D. Wash. March 2013) (same). Class Counsel’s  
 19 hourly rates are reasonable and appropriate for calculating the lodestar.

22       **E. Class Counsel Are Entitled to Reimbursement for Their Costs.**

23       “Reasonable costs and expenses incurred by an attorney who creates or preserves a  
 24 common fund are reimbursed proportionately by those class members who benefit from the  
 25 settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996).  
 26



Class Counsel incurred out-of-pocket costs totaling \$4,018.04 primarily to cover expenses representing costs such as filing and mediation fees, computerized legal research, investigation expenses, travel, and administrative costs such as copying, mailing, and messenger expenses. Turner Dec., ¶9. Class Counsel expects to incur an additional \$1,000.00 in costs and expenses. *Id.*, ¶10. Class Counsel put forward these out-of-pocket costs without assurance that they would be recouped. Turner Dec., ¶9. These out-of-pocket costs were necessary to secure the resolution of this litigation, and should be recouped.

**F. The Requested Service Award for the Class Representative Is Reasonable.**

Service awards (sometimes called “incentive” awards) compensating named plaintiffs for work done on behalf of the Settlement Class attempt to account for financial or reputational risks associated with litigation, and promote the public policy of encouraging individual plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). To determine the appropriate service award, courts examine the plaintiffs’ participation and actions, the degree to which the class benefitted from those actions, and the reasonable fear of workplace retaliation. *Staton*, 327 F.3d 938, 977 (9th Cir. 2003).

In this case, the Plaintiffs courageously brought claims despite the perceived threat of workplace retaliation or harassment. The Plaintiffs also worked with Class Counsel to provide their own payroll data, and information regarding the roles and duties of other workers at Air Serv. Turner Dec., ¶12. This information aided Class Counsel in determining whether Air Serv was a qualified employer under the Ordinance and the veracity of Plaintiffs’ claims. *Id.* The Plaintiffs were not deposed and did not testify. *Id.* Considering their participation and personal risk, the requested incentive awards of \$3,000.00 (\$1,000.00 each) for the class representatives is

reasonable and fair.

### III. CONCLUSION

Both the Plaintiffs and Class Counsel faced risks in pursuing this action and these claims. Despite these risks, both Plaintiffs and Class Counsel acted quickly and efficiently to demonstrate the economic benefit of an agreed-resolution to Air Serv, and to negotiate a favorable settlement for wages owed under the Ordinance. Based on the actions of Plaintiffs and Class Counsel, over 464 Air Serv employees will receive compensation. Considering the benefit to the Class Members, both Class Counsel and Plaintiffs' requests are reasonable and fair, and thus, should be awarded by the Court.

DATED this 17<sup>th</sup> day of August, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of August, 2018, the undersigned served a true and correct copy of the foregoing and its supporting documents on the following party(ies) via the method indicated below:

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